IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.Revision No. 72 of 2006.

Judgement reserved on: 30.10.2007

Date of decision: 29.11.2007.

Anil Chandel **…….Petitioner**

Vs.

State of H.P. **…. Respondent.**

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] Yes

For the Appellant : Mr. Tara Singh Chauhan, Advocate.

For the Respondent : Mr. Virender Kumar Verma, Additional Advocate General.

Kuldip Singh, Judge.

This revision is directed against the judgment dated 5.5.2006 passed by learned Addl. Sessions Judge (Fast Track), Kullu in Criminal Appeal No.01/2005/ RBT.Cr. Appeal No.01/2005.

2. The facts in brief are that Tempo Trax No.HP-24A 2186 was seized by Station House Officer, Banjar on 10.1.2002 along with 32 deodar sleepers, a forest produce which was being transported without permit in violation of the Indian Forest Act, 1927 (for short "Act"). After registration of FIR No.07/2002 vehicle along with seized timber were produced before the Authorized Officer for taking action under Section 52A of the Act.

Whether the reporters of the local papers may be allowed to see the Judgment? Yes

3. The authorized officer issued show-cause notices to Anil Chandel owner and Ramesh Kumar driver of the vehicle in terms of Section 52B of the Act. The owner and driver filed replies to the show cause. The parties led their evidence. The authorized officer vide order dated 19.11.2004 held that vehicle in question was transporting the timber in an illicit manner and resultantly the vehicle was ordered to be confiscated. The petitioner filed appeal against the order dated 19.11.2004 which has been dismissed by learned Addl. Sessions Judge on 5.5.2006, hence this revision.

4. I have heard the learned counsel for the petitioner and learned Addl. Advocate General for the State and gone through the record. The learned counsel for the petitioner has submitted that learned Addl. Sessions Judge has not considered vital evidence**.** The petitioner was not present in the vehicle when it was allegedly intercepted on 10.1.2002 and some deodar sleepers were recovered from the vehicle. The alleged transportation of the sleepers was not with the knowledge or connivance of the petitioner who is one of the owners of the vehicle. The prosecution has failed to prove knowledge or connivance of the petitioner for transportation of the timber in the vehicle. The other co-owner of the vehicle Bhawna Chandel has not been given any notice by the authorized officer. She is niece of the petitioner and not wife as wrongly observed in the impugned order. The driver of the vehicle died during the pendency of the criminal proceedings. The petitioner has been acquitted by learned Chief Judicial Magistrate, Lahaul-Spiti at Kullu in Cr. Case No.121-I of 2002/ II-II of 2006 on 20.3.2007 under Sections 379/34 IPC read with

Section 41,42 of the Act. The learned Addl. Advocate General has supported the impugned judgment.

5. In State of Himachal Pradesh Section 52A has been added in the Act w.e.f. 24.7.1991 which authorizes confiscation by authorized officer in certain cases. The power of confiscation of the authorized officer under Section 52A is not in dispute. Section 52B prescribes that no order of confiscation under Section 52A shall be made except after issuing notice in writing. Section 52B is as follows:-

> "*Issue of show cause notice confiscation under section 52A:-*
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> *(1) No order confiscating any timber (excluding fuel wood), resin, khair wood and katha, ropes chains, boats or vehicles shall be made under section 52A except after notice in writing to the person from whom it is seized and considering his objections, if any: Provided that no order confiscating a motor vehicle shall be made except, after giving notice in writing to the registered owner thereof, if in the opinion of the authorized officer it is practicable to do so and considering his objection if any.*
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> *(2) Without prejudice to the provisions of sub-section (1), no order confiscating any tool, rope chain, boat or vehicle shall be made under section 52A if the owner if the tool rope, chain, boat, or vehicle proves to the satisfaction of the authorized officer that it was used in carrying the timber (excluding fuelwood), resin, khair, wood and katha without the knowledge or connivance of the owner himself, his agent, if any and the person-in-charge of the tool, rope chain, boat or vehicle and that each of them had taken all reasonable and necessary precaution against such use".*

As per Section 52B no order of confiscation under Section 52A shall be made if the owner proves to the satisfaction of the authorized officer that the vehicle is used in carrying the timber without the knowledge or connivance of the owner himself, his agent, if any and the person-in-charge of the vehicle and each of them had taken all reasonable and necessary precaution against such use.

6. The authorized officer issued show cause notice dated 13.8.2002 to the petitioner and also to Ramesh Kumar driver. In the show cause issued to the petitioner it has been stated that petitioner was sitting personally with the driver in the vehicle and was intentionally transporting the timber. There is no allegation in the show cause notice that timber was being transported in the vehicle with the knowledge or connivance of the petitioner. The petitioner filed reply and denied the show cause. He has submitted that he was not sitting in the vehicle on 10.1.2002, rather he was ill and admitted in the Govt. Hospital from 8.1.2002 to 11.1.2002. The driver in his reply has also denied the show cause. The Station House Officer Police Station, Banjar in his written submission has submitted that the contention of the petitioner of illness is not tenable until or unless proper verification is not made.

7. PW-1 Krishan Dev has stated that on 10.1.2002 vehicle No.HP-24A-2186 was intercepted and 32 deodar sleepers of different sizes were found in the vehicle. The vehicle was handed over on spurdari by the police in this presence. He has not stated who was driving the vehicle nor he has stated that Anil Chandel was sitting in the vehicle.

8. PW-2 Ram Kumar is also a witness of spurdari of the vehicle and seized timber. He has not stated who was driving the vehicle nor he has stated that Anil Chandel was in the vehicle when it was intercepted. PW-3 Sandip Kumar Head Constable has stated that on 10.1.2002 he was with S.I./SHO Balwant Singh, ASI Gian Chand, constable Sunil Kumar for Nakka at place Dhaman, at about 7.30.a.m. Tempo/Trax No.HP-24A-2186 was stopped. The owner of the vehicle Anil Chandel ran away from the spot, he was given a chase but could not be caught. He has not stated who was driving the vehicle and who identified Anil Chandel or whether he knew Anil Chandel previously.

9. PW-4 Gian Chand has stated that in December 2001 he was posted as I.O./ASI, Police Station, Banjar. On 10.1.2002 he, Head constable Sandip Kumar, constable Sunil Kumar, S.I/SHO Balwant Singh were in vehicle No.HP-34A-0213 on patrol duty, at about 7.30 a.m. one kilometer ahead of Dhaman Tempo/Trax No.HP-24A-2186 came from Bali Chowki side. The driver of the vehicle stopped the vehicle at a distance from police party, two persons jumped from the vehicle and ran away. One of them was overpowered who on enquiry disclosed his name Ramesh Kumar. He told that the other person who ran away was Anil Chandel owner of the vehicle. On checking 32 sleepers of deodar of different sizes were recovered from the vehicle. In cross-examination he has stated that owner of the vehicle was not caught at the spot.

10. PW-5 Mohan Lal Head Constable has stated that he remained posted till February, 2002 as MHC, Police Station, Banjar.

He recorded the FIR. PW-6 Tule Ram is the witness of recovery of documents of the vehicle from Anil Chandel. PW-7 Balwant Singh has stated that he was posted as SHO, Police Station, Banjar in the year 2002. On 10.1.2002 he was patrolling in vehicle No.HP-34A-0213 along with ASI Gian Chand, H.C. Sandip Kumar, constable Sunil Kumar, at about 7.30 a.m. slightly ahead of Dhaman Tempo/Trax No.HP-24A-2186 came from Bali Chowki side and was stopped. On noticing the police, two persons who were sitting in the vehicle jumped from the vehicle and ran towards different directions, one of them was overpowered. He disclosed his name Ramesh Kumar and told that the other person was Anil Chandel owner of the vehicle. There were 32 sleepers of deodar of different sizes in the vehicle. No licence/permit for transporting the timber was produced. In cross-examination he has denied the suggestion that no sleepers were recovered from the vehicle nor Anil Chandel was sitting in the vehicle.

11. DW-1 Anil Chandel has stated that he is joint owner of Tempo-Trax No.HP-24A-2186. The other co-owner is Bhawna Chandel. On 10.1.2002 he was not sitting in the said TempoTrax, rather he was ill and was admitted in Govt. Ayurvedic Hospital, Deot from 8.1.2002 to 11.1.2002. He produced hospital slip mark-A and discharge slip mark-B. He was not cross-examined. DW-2 Satpal Nadda has stated that since 6.6.2000 he was posted as Ayurvedic doctor at Ayurvedic Health Centre, Deot. He knew Anil Chandel who remained admitted in his hospital from 8.1.2002 to 11.1.2002 as patient. He was suffering from cough, fever and “Amalpit”. He was

discharged on 11.1.2002. The OPD slip is Ex. DW-II/A and Ex.DW-II/B is the discharge slip and extract of OPD register is Ex.DW-II/C. This witness was also not cross-examined. DW-3 Ramesh Kumar has stated that he is driver of Tempo/Trax No.HP24A-2186. The police did not recover any deodar timber from this vehicle. He never told the police that on 10.1.2002 Anil Chandel was sitting in the vehicle. In cross-examination he has stated that he was all alone in the vehicle and there was no conductor. The learned counsel for the petitioner has stated that Anil Chandel has been acquitted in criminal case No.121-I/II-II of 2002 by learned Chief Judicial Magistrate. Lahaul-Spiti at Kullu on 20.3.2007. Infact certified copy of judgment dated 20.3.2007 has been placed on record. The learned Chief Judicial Magistrate has recorded a finding in the judgment dated 20.3.2007 that prosecution has not been able to establish the identity of Anil Chandel beyond reasonable doubt and therefore, acquitted Anil Chandel in the criminal case. Ramesh Kumar, Driver of the Tempo-Trax died during the pendency of the criminal proceedings.

12. In the show cause notice dated 13.8.20002 issued to Anil Chandel, it has been stated that he was sitting in the vehicle and was intentionally transporting the illicit timber. The show cause notice is not to the effect that timber was being transported in the vehicle with the knowledge or connivance of the petitioner and person-in-charge of the vehicle. The prosecution has not produced any independent witness in support of the fact that petitioner was sitting in the Tempo/Trax when it was intercepted by the police on 10.1.2002 and 32 deodar sleepers

of different sizes were recovered from the vehicle. The petitioner has specifically denied his presence in the Tempo/Trax when it was intercepted on 10.1.2002. The learned Chief Judicial Magistrate in his judgment dated 20.3.2007 has also recorded a finding that prosecution has not been able to establish the identity of Anil Chandel beyond reasonable doubt and acquitted him. Ramesh Kumar driver of Tempo/Trax has stated that he never told the police that Anil Chandel was sitting in the vehicle when it was intercepted. He, rather stated that he was all alone in the vehicle. DW-2 Satpal Nadda has stated that Anil Chandel remained admitted in Ayurvedic hospital from 8.1.2002 to 11.1.2002 and to this effect he has proved OPD slip Ex.DW-II/A and discharge slip Ex.DW-II/B. This witness has not been cross-examined. The petitioner himself has appeared as DW-1 and has stated that he remained admitted in Ayurvedic Hospital, Deot from 8.1.2002 to 11.1.2002. He was also not cross-examined. The non-cross-examination by the prosecution of DW-1 and DW-2 on the vital point that the petitioner was admitted in Ayurvedic hospital w.e.f. 8.1.2002 to 11.1.2002 amounts to admission of this fact stated on oath by these two witnesses. Therefore, it has been established that on 10.1.2002 petitioner Anil Chandel was not in the Tempo/Trax when it was intercepted by the police. Thus the case against the petitioner that he was sitting in the Tempo/Trax and the illicit timber was being transported at his instance in the vehicle fails.

13. In Criminal case No,121-I of 2002/II-II of 2006, original Registration Certificate (RC) of Tempo/Trax No.HP-24A-2186 has been placed on record. In RC owners of this vehicle have been

shown Anil Chandel son of Gian Chand and Bhawna Chandel D/O Vinod. In other words Bhawna Chandel is also co-owner of Tempo/Trax No.HP-24A-2186. The learned Addl. Sessions Judge has wrongly held that Bhawna Chandel is the wife of Anil Chandel. There is nothing on record to support this finding. The learned counsel for the petitioner has submitted that Bhawna Chandel is niece of Anil Chandel petitioner. In any case Bhawna Chandel is a co-owner of Tempo/Trax No.HP-24A-2186 and admittedly no notice under section 52B was given by the authorized officer to her before passing order of confiscation of Tempo/Trax No.HP-24A-2186. In absence of notice to Bhawna Chandel the authorized officer has erred in ordering confiscation of this vehicle and same error has been committed by learned Addl. Sessions Judge while dismissing the appeal. The prosecution has miserably failed to prove that any timber was being transported on 10.1.2002 in Tempo-Trax No.HP-24A-2186 with the connivance or knowledge of the petitioner and person-in-charge of the vehicle. Thus Tempo/Trax No.HP-24A-2186 is not liable for confiscation.

14. The result of above discussion, the revision is allowed. The judgment dated 5.5.2006 passed by learned Addl. Sessions Judge (Fast Track), Kullu, in Criminal Appeal No.01/2005/RBT.Cr.Appeal No.01/2005 along with order dated 19.11.2004 of Authorized Officer are set aside.

(Kuldip Singh)
Judge.

November 29, 2007
(sks)